

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ANDY GIL, RAFAEL HERNANDEZ, ANA
SAAVEDRA, CARLOS FRANCO, CARLOS
SIMBANA, EDUARDO ABREU, FRANKLIN
REYES, JHONATTAN OSPINA, JOSE PEREZ,
JUAN JUAREZ, KLEVER D. AGUIRRE,
MANUELO NUNEZ, MARIO RODAS, MISAELO
PORTILLO, MONICO FAMILIA, NATALY
NARANJO, NELSON SARABIA, OMAR
SANCHEZ, ROBERTO CARPIO, ALBERTO
HERNANDEZ, CESAR COLCHAO, LORENA
PALACIOS, LUIS CRESPO, LUIS GARCIA,
JIMMY SAGBAY, JOSE AGUSTIN, ANGEL
PEREZ, HECTOR A. MIRANDA, GREGORIO
ROJAS, SILVIA CORDERO, ROBERTO
HERRERA, DANIEL VIDAL, ERIK MARTINEZ,
OMAR MORALES, DEYSI GOMEZ, GREGORIO
OLIVERAS, JAVIER MEJIA, SERGIO MUNOZ,
LEONARDO GALVEZ, ORLANDO MUNOZ,
ELVIN GUILTY, and MARCOS MORALES,

Plaintiffs,

-against-

PIZZAROTTI, LLC, ATLANTIC CONTRACTING OF
YONKERS, INC., JOEL ACEVEDO, IGNAZIO
CAMPOCCIA, and GIACOMO DI'NOLA a/k/a
GIACOMO DI NOLA

Defendants.

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**ANSWER TO SECOND
AMENDED COMPLAINT**

19-CV-03497 (MKV)

PIZZAROTTI, LLC, IGNAZIO CAMPOCCIA, AND GIACOMO DI'NOLA a/k/a
GIACOMO DI NOLA (collectively referred to as "Defendants") by their attorneys, Cozen
O'Connor, hereby answer the allegations in Plaintiffs' Second Amended Complaint by stating that
any allegation not specifically admitted is denied and respond as follows:

1. Deny the allegations in Paragraph 1 of the Second Amended Complaint.
2. Deny the allegations in Paragraph 2 of the Second Amended Complaint and respectfully refer the Court to the Complaint for its full form and content.
3. State the allegations in Paragraph 3 of the Second Amended Complaint are conclusions of law which require no response.
4. State the allegations in Paragraph 4 of the Second Amended Complaint are conclusions of law which require no response and affirmatively state the Court should decline to exercise supplemental jurisdiction over all state law claims.
5. State the allegations in Paragraph 5 of the Second Amended Complaint are conclusions of law which require no response and further deny information or knowledge sufficient to form a belief as to Atlantic Contracting of Yonkers but admit Pizzarotti, LLC maintains its principal place of business in this District.
6. State the allegations in Paragraph 6 of the Second Amended Complaint are conclusions of law which require no response.
7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Second Amended Complaint.
8. Deny the allegations in Paragraph 8 of the Second Amended Complaint.
9. Deny the allegations in Paragraph 9 of the Second Amended Complaint.
10. Deny the allegations in Paragraph 10 of the Second Amended Complaint.
11. Deny the allegations in Paragraph 11 of the Second Amended Complaint.
12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Second Amended Complaint.
13. Deny the allegations in Paragraph 13 of the Second Amended Complaint.
14. Deny the allegations in Paragraph 14 of the Second Amended Complaint.

15. Deny the allegations in Paragraph 15 of the Second Amended Complaint.
16. Deny information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Second Amended Complaint and therefore deny them.
17. Deny the allegations in Paragraph 17 of the Second Amended Complaint.
18. Deny the allegations in Paragraph 18 of the Second Amended Complaint.
19. Deny the allegations in Paragraph 19 of the Second Amended Complaint.
20. Deny the allegations in Paragraph 20 of the Second Amended Complaint.
21. Deny the allegations in Paragraph 21 of the Second Amended Complaint.
22. Deny the allegations in Paragraph 22 of the Second Amended Complaint.
23. Deny the allegations in Paragraph 23 of the Second Amended Complaint.
24. Deny the allegations in Paragraph 24 of the Second Amended Complaint.
25. Deny the allegations in Paragraph 25 of the Second Amended Complaint.
26. Deny the allegations in Paragraph 26 of the Second Amended Complaint.
27. Deny the allegations in Paragraph 27 of the Second Amended Complaint.
28. Deny the allegations in Paragraph 28 of the Second Amended Complaint.
29. Deny the allegations in Paragraph 29 of the Second Amended Complaint.
30. Deny the allegations in Paragraph 30 of the Second Amended Complaint.
31. Deny the allegations in Paragraph 31 of the Second Amended Complaint.
32. Deny the allegations in Paragraph 32 of the Second Amended Complaint.
33. Deny the allegations in Paragraph 33 of the Second Amended Complaint.
34. Deny the allegations in Paragraph 34 of the Second Amended Complaint.
35. Deny the allegations in Paragraph 35 of the Second Amended Complaint.
36. Deny the allegations in Paragraph 36 of the Second Amended Complaint.
37. Deny the allegations in Paragraph 37 of the Second Amended Complaint.

38. Deny the allegations in Paragraph 38 of the Second Amended Complaint.
39. Deny the allegations in Paragraph 39 of the Second Amended Complaint.
40. Deny the allegations in Paragraph 40 of the Second Amended Complaint.
41. Deny the allegations in Paragraph 41 of the Second Amended Complaint.
42. Deny the allegations in Paragraph 42 of the Second Amended Complaint.
43. Deny the allegations in Paragraph 43 of the Second Amended Complaint.
44. Deny the allegations in Paragraph 44 of the Second Amended Complaint.
45. Deny the allegations in Paragraph 45 of the Second Amended Complaint.
46. Deny the allegations in Paragraph 46 of the Second Amended Complaint.
47. Deny the allegations in Paragraph 47 of the Second Amended Complaint.
48. Deny the allegations in Paragraph 48 of the Second Amended Complaint.
49. Deny the allegations in Paragraph 49 of the Second Amended Complaint.
50. Deny the allegations in Paragraph 50 of the Second Amended Complaint.
51. Deny the allegations in Paragraph 51 of the Second Amended Complaint.
52. Deny the allegations in Paragraph 52 of the Second Amended Complaint.
53. Deny the allegations in Paragraph 53 of the Second Amended Complaint.
54. Deny the allegations in Paragraph 54 of the Second Amended Complaint.
55. Deny the allegations in Paragraph 55 of the Second Amended Complaint.
56. Deny the allegations in Paragraph 56 of the Second Amended Complaint.
57. Deny the allegations in Paragraph 57 of the Second Amended Complaint.
58. Deny the allegations in Paragraph 58 of the Second Amended Complaint.
59. Deny the allegations in Paragraph 59 of the Second Amended Complaint.
60. Deny the allegations in Paragraph 60 of the Second Amended Complaint.
61. Deny the allegations in Paragraph 61 of the Second Amended Complaint.

62. Deny the allegations in Paragraph 62 of the Second Amended Complaint.
63. Deny the allegations in Paragraph 63 of the Second Amended Complaint.
64. Deny the allegations in Paragraph 64 of the Second Amended Complaint.
65. Deny the allegations in Paragraph 65 of the Second Amended Complaint.
66. Deny the allegations in Paragraph 66 of the Second Amended Complaint.
67. Deny the allegations in Paragraph 67 of the Second Amended Complaint.
68. Deny the allegations in Paragraph 68 of the Second Amended Complaint.
69. Deny the allegations in Paragraph 69 of the Second Amended Complaint.
70. Deny the allegations in Paragraph 70 of the Second Amended Complaint.
71. Deny the allegations in Paragraph 71 of the Second Amended Complaint.
72. Deny the allegations in Paragraph 72 of the Second Amended Complaint.
73. Deny the allegations in Paragraph 73 of the Second Amended Complaint.
74. Deny the allegations in Paragraph 74 of the Second Amended Complaint.
75. Deny the allegations in Paragraph 75 of the Second Amended Complaint.
76. Deny the allegations in Paragraph 76 of the Second Amended Complaint.
77. Deny the allegations in Paragraph 77 of the Second Amended Complaint.
78. Deny the allegations in Paragraph 78 of the Second Amended Complaint.
79. Deny the allegations in Paragraph 79 of the Second Amended Complaint.
80. Deny the allegations in Paragraph 80 of the Second Amended Complaint.
81. Deny the allegations in Paragraph 81 of the Second Amended Complaint.
82. Deny the allegations in Paragraph 82 of the Second Amended Complaint.
83. Deny the allegations in Paragraph 83 of the Second Amended Complaint.
84. Deny the allegations in Paragraph 84 of the Second Amended Complaint.
85. Deny the allegations in Paragraph 85 of the Second Amended Complaint.

86. Deny the allegations in Paragraph 86 of the Second Amended Complaint.
87. Deny the allegations in Paragraph 87 of the Second Amended Complaint.
88. Deny the allegations in Paragraph 88 of the Second Amended Complaint.
89. Deny the allegations in Paragraph 89 of the Second Amended Complaint.
90. Deny the allegations in Paragraph 90 of the Second Amended Complaint.
91. Deny the allegations in Paragraph 91 of the Second Amended Complaint.
92. Deny the allegations in Paragraph 92 of the Second Amended Complaint.
93. Deny the allegations in Paragraph 93 of the Second Amended Complaint.
94. Deny the allegations in Paragraph 94 of the Second Amended Complaint.
95. Deny the allegations in Paragraph 95 of the Second Amended Complaint.
96. Deny the allegations in Paragraph 96 of the Second Amended Complaint.
97. Deny the allegations in Paragraph 97 of the Second Amended Complaint.
98. Deny the allegations in Paragraph 98 of the Second Amended Complaint.
99. Deny the allegations in Paragraph 99 of the Second Amended Complaint.
100. Deny the allegations in Paragraph 100 of the Second Amended Complaint.
101. Deny the allegations in Paragraph 101 of the Second Amended Complaint.
102. Deny the allegations in Paragraph 102 of the Second Amended Complaint.
103. Deny the allegations in Paragraph 103 of the Second Amended Complaint.
104. Deny the allegations in Paragraph 104 of the Second Amended Complaint.
105. Deny the allegations in Paragraph 105 of the Second Amended Complaint.
106. Deny the allegations in Paragraph 106 of the Second Amended Complaint.
107. Deny the allegations in Paragraph 107 of the Second Amended Complaint.
108. Deny the allegations in Paragraph 108 of the Second Amended Complaint.
109. Deny the allegations in Paragraph 109 of the Second Amended Complaint.

110. Deny the allegations in Paragraph 110 of the Second Amended Complaint.
111. Deny the allegations in Paragraph 111 of the Second Amended Complaint.
112. Deny the allegations in Paragraph 112 of the Second Amended Complaint.
113. Deny the allegations in Paragraph 113 of the Second Amended Complaint.
114. Deny the allegations in Paragraph 114 of the Second Amended Complaint.
115. Deny the allegations in Paragraph 115 of the Second Amended Complaint.
116. Deny the allegations in Paragraph 116 of the Second Amended Complaint.
117. Deny the allegations in Paragraph 117 of the Second Amended Complaint.
118. Deny the allegations in Paragraph 118 of the Second Amended Complaint.
119. Deny the allegations in Paragraph 119 of the Second Amended Complaint.
120. Deny the allegations in Paragraph 120 of the Second Amended Complaint.
121. Deny the allegations in Paragraph 121 of the Second Amended Complaint.
122. Deny the allegations in Paragraph 122 of the Second Amended Complaint.
123. Deny the allegations in Paragraph 123 of the Second Amended Complaint.
124. Deny the allegations in Paragraph 124 of the Second Amended Complaint.
125. Deny the allegations in Paragraph 125 of the Second Amended Complaint.
126. Deny the allegations in Paragraph 126 of the Second Amended Complaint.
127. Deny the allegations in Paragraph 127 of the Second Amended Complaint.
128. Deny the allegations in Paragraph 128 of the Second Amended Complaint.
129. Deny the allegations in Paragraph 129 of the Second Amended Complaint.
130. Deny the allegations in Paragraph 130 of the Second Amended Complaint.
131. Deny the allegations in Paragraph 131 of the Second Amended Complaint.
132. Deny the allegations in Paragraph 132 of the Second Amended Complaint.
133. Deny the allegations in Paragraph 133 of the Second Amended Complaint.

134. Deny the allegations in Paragraph 134 of the Second Amended Complaint.

135. Deny the allegations in Paragraph 135 of the Second Amended Complaint.

136. State the allegations in Paragraph 136 are conclusions of law which require no response and specifically deny Plaintiffs were “employees” of Defendants.

137. Admit the allegations in Paragraph 137 of the Second Amended Complaint.

138. Deny the allegations in Paragraph 138 of the Second Amended Complaint.

139. Deny knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 139 of the Second Amended Complaint.

140. Admit the allegations in Paragraph 140 of the Second Amended Complaint.

141. Deny the allegations in Paragraph 141 of the Second Amended Complaint.

142. Deny the allegations in Paragraph 142 of the Second Amended Complaint.

143. Deny the allegations in Paragraph 143 of the Second Amended Complaint.

144. State the allegations in Paragraph 144 of the Second Amended Complaint do not require a response and thus they are denied.

145. Deny the allegations in Paragraph 145 of the Second Amended Complaint but upon information and belief admit Joel Acevedo and Atlantic Contracting of Yonkers Inc., were the “employers” of Plaintiffs.

146. Deny the allegations in Paragraph 146 of the Second Amended Complaint.

147. Deny the allegations in Paragraph 147 of the Second Amended Complaint.

148. State the allegations in Paragraph 148 of the Second Amended Complaint are conclusions of law which require no response and further deny the allegations on the basis that it does not provide a time period.

149. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 149 of the Complaint.

150. Admit the allegations in Paragraph 150 of the Second Amended Complaint.

151. Deny the allegations in Paragraph 151 of the Second Amended Complaint.

152. Deny the allegations in Paragraph 152 of the Second Amended Complaint.

153. Deny the allegations in Paragraph 153 of the Second Amended Complaint but admit

Defendant Pizzarotti was the general contractor on the Jardim project.

154. Deny the allegations in Paragraph 154 of the Second Amended Complaint.

155. Deny the allegations in Paragraph 155 of the Second Amended Complaint.

156. Deny the allegations in Paragraph 156 of the Second Amended Complaint.

157. Deny the allegations in Paragraph 157 of the Second Amended Complaint.

158. Deny the allegations in Paragraph 158 of the Second Amended Complaint.

159. Deny the allegations in Paragraph 159 of the Second Amended Complaint.

160. Deny the allegations in Paragraph 160 of the Second Amended Complaint.

161. Deny the allegations in Paragraph 161 of the Second Amended Complaint.

162. Deny the allegations in Paragraph 162 of the Second Amended Complaint.

163. Deny the allegations in Paragraph 163 of the Second Amended Complaint.

164. Deny the allegations in Paragraph 164 of the Second Amended Complaint.

165. Deny the allegations in Paragraph 165 of the Second Amended Complaint.

166. Deny the allegations in Paragraph 166 of the Second Amended Complaint.

167. Deny the allegations in Paragraph 167 of the Second Amended Complaint.

168. Deny the allegations in Paragraph 168 of the Second Amended Complaint.

169. Deny the allegations in Paragraph 169 of the Second Amended Complaint.

170. Deny the allegations in Paragraph 170 of the Second Amended Complaint.

171. Deny the allegations in Paragraph 171 of the Second Amended Complaint.

172. Deny the allegations in Paragraph 172 of the Second Amended Complaint.

173. Deny the allegations in Paragraph 173 of the Second Amended Complaint.

174. Deny the allegations in Paragraph 174 of the Second Amended Complaint.

175. Deny the allegations in Paragraph 175 of the Second Amended Complaint.

176. Deny the allegations in Paragraph 176 of the Second Amended Complaint.

177. Deny the allegations in Paragraph 177 of the Second Amended Complaint.

178. Deny the allegations in Paragraph 178 of the Second Amended Complaint.

179. Deny the allegations in Paragraph 179 of the Second Amended Complaint.

180. Deny the allegations in Paragraph 180 of the Second Amended Complaint.

181. Deny the allegations in Paragraph 181 of the Second Amended Complaint.

182. Deny the allegations in Paragraph 182 of the Second Amended Complaint.

183. Deny the allegations in Paragraph 183 of the Second Amended Complaint.

184. Deny the allegations in Paragraph 184 of the Second Amended Complaint and respectfully refer the Court to the Second Amended Complaint for its full form and content.

185. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 185 of the Second Amended Complaint.

186. Deny the allegations in Paragraph 186 of the Second Amended Complaint.

187. Deny the allegations in Paragraph 187 of the Second Amended Complaint

188. Repeat and re-allege responses set forth in Paragraphs 1-187 above as though fully set forth herein.

189. Deny the allegations in Paragraph 189 of the Second Amended Complaint.

190. Deny the allegations in Paragraph 190 of the Second Amended Complaint.

191. Deny the allegations in Paragraph 191 of the Second Amended Complaint.

192. Deny the allegations in Paragraph 192 of the Second Amended Complaint.

193. Repeat and re-allege responses set forth in Paragraphs 1-192 above as though fully set forth herein.

194. State the allegations in Paragraph 194 of the Second Amended Complaint are conclusions of law which require no response.

195. State the allegations in Paragraph 195 of the Second Amended Complaint are conclusions of law which require no response.

196. Deny the allegations in Paragraph 196 of the Second Amended Complaint.

197. Deny the allegations in Paragraph 197 of the Second Amended Complaint.

198. Deny the allegations in Paragraph 198 of the Second Amended Complaint.

199. Deny the allegations in Paragraph 199 of the Second Amended Complaint and respectfully refer the Court to the Second Amended Complaint for its full form and content.

200. Repeat and re-allege responses set forth in Paragraphs 1-199 above as though fully set forth herein.

201. Deny the allegations in Paragraph 201 of the Second Amended Complaint.

202. Deny the allegations in Paragraph 202 of the Second Amended Complaint.

203. Deny the allegations in Paragraph 203 of the Second Amended Complaint.

204. Deny the allegations in Paragraph 204 of the Second Amended Complaint.

205. Deny the allegations in Paragraph 205 of the Second Amended Complaint.

206. Deny Plaintiffs are entitled to any relief set forth in the PRAYER FOR RELIEF Paragraph including all subpart (a) – (f).

DEFENSES

First Defense

The Complaint and each and every cause of action contained therein, fails to state a claim on which relief can be granted.

Second Defense

Defendants had no intention to violate any provision of the Fair Labor Standards Act and/or New York Labor Law. Therefore, Defendants did not and are not willfully or recklessly violating the Fair Labor Standards Act and/or New York Labor Law.

Third Defense

Defendants have acted in good faith belief that they are and were complying with all applicable provisions of the Fair Labor Standards Act and/or New York Labor Law.

Fourth Defense

Plaintiffs' claims and those of the purported collective members are barred, in whole or in part, by the applicable statute of limitations.

Fifth Defense

The case is not appropriate for a collective action because Plaintiffs are not similarly situated to other members of the purported collective action nor to themselves.

Sixth Defense

Defendants did not have any knowledge that the Plaintiff and/or members of the purported collective or class performed any work for which they were not compensated.

Seventh Defense

Ignazio Campoccia and Giacomo Di'Nola, as individuals, are not an employers and thus not proper defendants.

Eighth Defense

To the extent that Plaintiff and/or members of the purported collective or class performed work for which they were not compensated, such time was *de minimis*.

Ninth Defense

Plaintiffs and all purported class or collective action members received complete and timely payment of all wages.

Tenth Defense

The New York state law claims of Plaintiff and/or members of the purported collective class must be dismissed because of a lack of supplemental jurisdiction over those claims, or, alternatively, the Court should exercise its discretion and not retain supplemental jurisdiction over the New York state law claims.

Eleventh Defense

Pizzarotti, LLC is not an employer of Plaintiffs and thus has no liability under applicable federal and state wage and hour laws.

Twelfth Defense

Each and every claim for relief contained therein, is barred as to all hours which Plaintiff and/or members of the purported collective class were engaged in preliminary or postliminary activities.

Thirteenth Defense

Pizzarotti, LLC and Atlantic Contracting of Yonkers, Inc. do not constitute a single enterprise and/or are not joint employers.

Fourteenth Defense

The Plaintiff does not meet the F.R.C.P. Rule 23 requirements and thus is action is not appropriate for class action treatment.

Fifteenth Defense

At all relevant times, Atlantic Contracting of Yonkers, Inc., and Joel Acevedo were independent contractors / subcontractors to Pizzarotti, LLC.

WHEREFORE, Defendants pray that judgment be entered in their favor and against Plaintiffs, and that the Court award Defendants the costs of defense, including reasonable attorneys' fees, and such other relief as may be just and proper.

Dated: New York, New York
May 11, 2022

COZEN O'CONNOR

Attorneys for Defendants

PIZZAROTTI LLC, IGNAZIO CAMPOCCIA and
GIACOMO DI'NOLA

By: /s/ John Ho
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CERTIFICATE OF SERVICE

This is to certify that on May 11, 2022, I caused a true and accurate copy of the foregoing to be filed via the Court's electronic filing system (ECF), which makes it available to all parties for viewing and downloading.

s/ Janice Sued Agresti
Janice Sued Agresti